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Center for Human Rights

Venezuela v. Vannesa Rosales

December 2022

A stylized, monochromatic illustration in shades of brown and tan. It depicts a hand holding a book. The book is wrapped in barbed wire, symbolizing restriction or oppression. Above the hand, there are several leaves, suggesting a plant or a tree. The background is a solid light brown color.

TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

ABOUT THE AUTHORS:

Staff at the American Bar Association Center for Human Rights drafted this report. The **American Bar Association** (ABA) is the largest voluntary association of lawyers and legal professionals in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The **ABA Center for Human Rights** mobilizes lawyers to help threatened advocates, protect vulnerable communities, and hold governments accountable under law. It has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries. It is an implementing partner in the Clooney Foundation for Justice's TrialWatch initiative.

International human rights lawyer **Paula Ávila-Guillen** is the **TrialWatch Expert**. Paula is a Green Wave movement leader and Executive Director at the Women's Equality Center (WEC). She has helped lead the fight to decriminalize abortion in her home country of Colombia and has supported the efforts that led to decriminalization in Argentina and Mexico. Paula is part of the coalition of leaders holding El Salvador's government accountable for the systematic persecution and criminalization of women unjustly sentenced to imprisonment after having suffered obstetric emergencies and has contributed to obtaining the freedom of over 66 Salvadoran women.

ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

The **Clooney Foundation for Justice** (CFJ) advocates for justice through accountability for human rights abuses around the world. **TrialWatch** is an initiative of the Clooney Foundation for Justice. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTIQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Ranking exposing countries' performance and use it to support advocacy for systemic change.

The views expressed herein represent the opinions of the authors. They have not been reviewed or approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association or any of its entities. Furthermore, nothing in this report should be considered legal advice for specific cases. Additionally, the views expressed in this report are not necessarily those of the Clooney Foundation for Justice.



Paula Ávila-Guillen, who is a member of the TrialWatch Experts Panel, assigned this trial a grade of D:

Vannesa Rosales, a social worker, was prosecuted for assisting a young girl living in extreme poverty in terminating her pregnancy after being raped. In this case, the authorities misused the power of the criminal legal system against Ms. Rosales. Until an international outcry and public pressure from advocates compelled the prosecution to withdraw most of the charges against her, she faced several charges, including under a law aimed at combating organized crime that carried up to ten years of imprisonment – all for providing medication to protect the health and life of a child who was a rape victim and who was facing a risky pregnancy. Multiple irregularities and due process violations during the proceedings and the harassment of Ms. Rosales’s attorneys indicate that she was targeted for her advocacy for sexual and reproductive rights. In the end, Ms. Rosales spent three months in pretrial detention and seven months under house arrest, and had to plead guilty to an offense she should never have been charged with in the first place, giving this case a “D” under the grading methodology found in the Annex.

This case – in which Vannesa Rosales, a social worker and schoolteacher, was prosecuted for assisting a child living in extreme poverty in terminating her pregnancy after being raped – is emblematic of the utter failure of the Venezuelan authorities to protect the rights of women and girls. Alarming, the authorities weaponized the criminal justice system against a human rights defender who stepped in to assist a young girl access the healthcare that should have been provided by the State. The criminal proceedings against Ms. Rosales constituted an abuse of process, reflecting patterns of state harassment of human rights advocates as well as impunity for sexual violence and violations of the rights to life, health and non-discrimination.

The American Bar Association Center for Human Rights monitored the proceedings against Ms. Rosales as part of the Clooney Foundation for Justice’s TrialWatch initiative. Ms. Rosales was first arrested on October 12, 2020 in Mérida, Venezuela on charges related to providing misoprostol to a 13-year-old former student (KS), upon the request of KS’s mother. KS’s pregnancy was the result of rape. At the initial appearance hearing, the judge ratcheted up the charges against Ms. Rosales, including adding charges under a law aimed at combating organized crime. Ms. Rosales spent three months in pretrial detention and – only after a public advocacy campaign put pressure on authorities – was then released to house arrest, where she remained for nearly seven months until the first hearing in her case on July 21, 2021. At the hearing, the prosecution dropped most of the charges against Ms. Rosales in exchange for her pleading guilty to one criminal charge

with a penalty enhancement. Although that offense carried a sentence of imprisonment, she was sentenced to community service in accordance with the plea agreement.

Multiple factors strongly indicate that Ms. Rosales was targeted because of her work on sexual and reproductive rights. These include due process violations, delays in the case, the judge's reference to items associated with Ms. Rosales's advocacy work in the judicial reasoning on the requalification of charges and pretrial detention, and the judge's unjustified decision to add new charges and severe penalty enhancements, including under laws aimed at combating organized crime. Ms. Rosales's lawyers were also the target of state harassment, seemingly for their work representing her and other women's rights defenders. Meanwhile, KS's alleged rapist has not been apprehended or charged.

This case demonstrates not only Venezuela's failure to uphold its international obligations but also the ways in which young girls in vulnerable situations like KS are particularly impacted by Venezuela's restrictive laws. Because of the complete lack of available healthcare – in large part because of Venezuela's restrictive laws criminalizing abortion and the associated stigma around reproductive care – KS and her mother had very few options when seeking to terminate a potentially life-threatening pregnancy that resulted from KS being repeatedly raped. They were thus forced to seek clandestine assistance from one of their few sources of support, Ms. Rosales. State authorities then compounded the girl's trauma by interrogating her alone at the hospital and initiating criminal prosecutions against Ms. Rosales and the child's mother.

More broadly, Venezuela's legislative framework, which criminalizes abortion with almost no exceptions, violates international standards on the rights to life and health and the prohibition against discrimination, and contributes to the stigmatization of women who seek reproductive care and the activists who assist them. Ms. Rosales's arrest and detention has already had a chilling effect on the activities of organizations and feminist networks that assist vulnerable women and girls like KS, putting more lives at risk. Venezuela must reform its legal framework and policies and bring them in line with international standards.



BACKGROUND INFORMATION

Political Background

Although Venezuela is a constitutional republic, it “does not function as a representative democracy,” according to Freedom House.¹ Following flawed presidential elections in 2018, which were widely condemned by international observers as neither free nor fair and the results of which were disputed, President Nicolas Maduro refused to cede the presidency when his term ended on January 10, 2019.² On January 23, 2019, the president of the democratically-elected National Assembly, Juan Guaido, assumed the role of interim president (in line with constitutional provisions on vacancies).³ Although more than 50 countries formally recognized Mr. Guaido as interim president of Venezuela at the time,⁴ Mr. Maduro retained control of “the instruments of state power,” relying heavily on the military and paramilitary forces and assistance from foreign states such as Russia, Cuba and Iran.⁵ The US Department of State reported that “[c]ivilian authorities’ control over the security forces declined and was deeply politicized.”⁶

In Freedom House’s 2022 Freedom in the World report, an annual global survey on political rights and civil liberties, Freedom House rated Venezuela “not free,” with a score of 14 out of 100, noting that “democratic institutions have deteriorated [particularly] sharply” in recent years, and that “the authorities have closed off virtually all channels for political dissent [and] restrict[ed] civil liberties.”⁷ It observed that Venezuela’s “[a]ctivists and NGOs are routinely harassed, threatened, and subject to legal and administrative sanctions for their work.”⁸ With respect to due process rights, Freedom House gave Venezuela a score of 0 out of 4, noting that “opponents of the government and the ruling political party are routinely detained and prosecuted without regard for due process.”⁹ According to the International Commission of Jurists, lawyers who represent victims of

¹ Freedom House, “Freedom in the World 2022: Venezuela”, Available at <https://freedomhouse.org/country/venezuela/freedom-world/2022#PR>.

² See, e.g., US Department of State, “Venezuela 2020 Human Rights Report”, 2020. Available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/venezuela/>; BBC, “Venezuela’s parliamentary poll: Five things you need to know”, December 6, 2020. Available at <https://www.bbc.com/news/world-latin-america-55171253>.

³ US Department of State, “Venezuela 2020 Human Rights Report”.

⁴ International recognition for Mr. Guaido has since waned. Most notably, the EU rescinded recognition in January 2021, after Mr. Guaido lost his position as head of Parliament following elections in December 2020, “despite the EU not recognizing that vote.” See, e.g., Reuters, “EU states no longer recognize Guaido as Venezuela’s interim president”, January 25, 2021. Available at <https://www.reuters.com/article/us-venezuela-politics-eu/eu-states-no-longer-recognise-guaido-as-venezuelas-interim-president-idUSKBN29U1A3>.

⁵ US Department of State, “Venezuela 2020 Human Rights Report”; Freedom House, “Freedom in the World 2022: Venezuela”.

⁶ Freedom House, “Freedom in the World 2022: Venezuela”.

⁷ Id.

⁸ Id.

⁹ Id.

human rights violations are targeted and “frequently subjected to various forms of pressure, harassment, intimidation or persecution by the authorities,” including direct threats.¹⁰

Additionally, the judiciary is widely perceived to lack independence.¹¹ In Venezuela’s 2022 Universal Periodic Review, submissions from civil society and human rights organizations reported on the “lack of independence in the judiciary” and cited “cases of corruption, of intentionally delaying trial proceedings, and of impunity.”¹²

Sexual and Reproductive Rights in Venezuela

The humanitarian crisis that began in 2014, “the product of years of economic mismanagement and official corruption as well as a sharp decline in oil prices,” according to the Wilson Center, resulted in “widespread poverty and chronic shortages of food, medicine, and other basic necessities.”¹³ This in turn impacted access to sexual and reproductive care and maternal outcomes.¹⁴ In 2021, the Inter-American Commission on Human Rights (IACHR) voiced its concern over the apparent “lack of access to sexual and reproductive health services in Venezuela, which is having a disproportionate impact on women and pregnant people of all ages during pregnancy and childbirth.”¹⁵

Among other things, the collapse of Venezuela’s economy, runaway inflation and sanctions have combined to dramatically decrease access to contraception, which was previously provided for free at government hospitals. Condoms and birth control pills are often out of stock for months at a time.¹⁶ According to a study conducted by civil society

¹⁰ International Commission of Jurists, “Lawyers under attack: Barriers to the legal procession in Venezuela”, May 2022, pg. 3. Available at [icj.org/wp-content/uploads/2022/06/Venezuela-Lawyers-under-attack-publications-briefing-paper-2022-ENG.pdf](https://www.icj.org/wp-content/uploads/2022/06/Venezuela-Lawyers-under-attack-publications-briefing-paper-2022-ENG.pdf).

¹¹ See, e.g., *id.*; International Commission of Jurists, “Venezuela: the authorities must stop undermining judicial independence”, April 29, 2022. Available at <https://www.icj.org/venezuela-the-authorities-must-stop-undermining-judicial-independence>; OHCHR, “Venezuelan justice system plays significant role in the State’s repression of government opponents”, September 16, 2021. Available at <https://www.ohchr.org/en/press-releases/2021/09/venezuelan-justice-system-plays-significant-role-states-repression>; OHCHR, “Venezuela must guarantee impartial justice, says UN human rights expert”, March 1, 2019. Available at <https://www.ohchr.org/en/press-releases/2019/03/venezuela-must-guarantee-impartial-justice-says-un-human-rights-expert>.

¹² Human Rights Council, Summary of Stakeholders’ submissions on Venezuela, U.N. Doc. A/HRC/WG.6/40/VEN/3, November 1, 2021, para. 23.

¹³ Wilson Center, “Understanding the Venezuelan Refugee Crisis”, September 13, 2019. Available at <https://www.wilsoncenter.org/article/understanding-the-venezuelan-refugee-crisis#:~:text=The%20humanitarian%20crisis%20in%20Venezuela%2C%20manifest%20in%20widespread,decline%20in%20oil%20prices%20between%202013%20and%202016>.

¹⁴ *Id.*

¹⁵ Organization of American States, “IACHR expresses concern over lack of access to sexual and reproductive health services in Venezuela”, April 6, 2021. Available at http://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/085.asp.

¹⁶ See, e.g., Vice, “Venezuela is running low on Condoms, Birth Control and Shampoo”, March 16, 2022. Available at https://www.vice.com/en_us/article/zngak8/venezuela-condoms-contraceptives-no-access-economy-sex-fear-876; Washington Post, “Even Sex is in Crisis in Venezuela, where contraceptives are growing scarce”, November 17, 2017, Available at https://www.washingtonpost.com/world/the_americas/even-sex-is-in-crisis-in-venezuela-where-

organizations in 2019, the shortage of contraception in pharmacies ranged from 83.3% to 91.7%.¹⁷ What is available, including on the black market, is prohibitively expensive: in 2019, the New York Times reported that a pack of three condoms in the country's capital cost "three times Venezuela's monthly wage of \$1.50," that birth control pills cost \$11, and that an intrauterine device (IUD) cost "more than 25 times the minimum wage."¹⁸

Extreme levels of poverty – according to an annual study on living conditions, three-quarters of Venezuelans lived on less than \$1.90 per day in 2021¹⁹ – and food shortages have left many pregnant women²⁰ malnourished and at higher risk for complications. One study by Caritas in 2018 found that 21% of pregnant women surveyed in low-income communities were moderately or severely undernourished.²¹

A lack of nutrition together with the crumbling of healthcare infrastructure, which has left hospitals extremely understaffed and without regular access to utilities or basic equipment and medicines,²² has drastically increased birth-related mortality rates: in 2016, the last year Venezuela's Ministry of Health released data, Venezuela had one of the highest maternal mortality rates in the region at 125 deaths per 100,000 births.²³ Human Rights Watch reported that maternal mortality increased by 65% and infant mortality rose by 30% from 2015 to 2016,²⁴ and further reported that the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) had recorded the deaths of 352 women

contraceptives-are-growing-scarce/2017/11/27/5d970d86-b452-11e7-9b93-b97043e57a22_story; New York Times, "Venezuelan women lose access to contraception, and then lose control of their lives", February 20, 2021. Available at <https://www.nytimes.com/2021/02/20/world/americas/venezuela-birth-control-women.html>.

¹⁷ Organization of American States, "IACHR expresses concern over lack of access to sexual and reproductive health services in Venezuela", April 6, 2021 [citing 2019 study].

¹⁸ New York Times, "Venezuelan women lose access to contraception, and then lose control of their lives", February 20, 2021.

¹⁹ Encuesta Nacional de Condiciones de Vida (ENCOVI), "Condiciones de vida de los venezolanos: entre emergencia humanitaria y pandemia" [Living conditions of Venezuelans: Between the humanitarian emergency and the pandemic], September 2021. Available at https://assets.website-files.com/5d14c6a5c4ad42a4e794d0f7/6153ad6fb92e4428cada4fb7_Presentacion%20ENCOVI%202021%20V1.pdf.

²⁰ Throughout the report, "women" is used for consistency, but it is recognized that not all people seeking reproductive health care, including pregnant people, identify as women.

²¹ Mujeres al Límite, "Derechos de Las Mujeres de Cara al Agravamiento de La Emergencia Humanitaria Compleja en Venezuela", 2019, pgs. 16, 41, describing data collected by Caritas in 2018 in which 21% of pregnant women were found to be severely undernourished.

²² See, e.g., New York Times, "Venezuelan Women Lose Access to Contraception, and Control of their Lives", February 20, 2021; Human Rights Watch, "World Report 2021: Venezuela", 2021. Available at <https://www.hrw.org/report/2019/04/04/venezuelas-humanitarian-emergency/large-scale-un-response-needed-address-health>; Organization of American States, "IACHR expresses concern over lack of access to sexual and reproductive health services in Venezuela", April 6, 2021 [The IACHR reported receiving "testimonies from women who claimed that they had to provide hospitals with surgical and prophylactic instruments in order to receive prenatal checkups and deliver their babies there"].

²³ United Nations Population Fund (UNFPA), "State of World Population 2022: Seeing the Unseen", pg. 124. Available at https://www.unfpa.org/sites/default/files/pub-pdf/EN_SWP22%20report_0.pdf.

²⁴ Human Rights Watch, "Venezuela's Humanitarian Emergency", April 4, 2019. Available at https://www.hrw.org/report/2019/04/04/venezuelas-humanitarian-emergency/large-scale-un-response-needed-address-health#_ftn20.

during pregnancy, childbirth, or postpartum in 2019.²⁵ Media outlets have reported that women are often forced to travel long distances to multiple hospitals before finding some degree of the care they need.²⁶

Girls in Venezuela have been particularly impacted: with contraception largely inaccessible, adolescent birth rates are now the highest in the region at 95 births per 1,000 girls aged 15-19,²⁷ nearly double the average rate across Latin America (59 per 1,000 girls).²⁸ Girls are also at higher risk of severe health complications. The UN Working Group on discrimination against women and girls has highlighted that “pregnancy and childbirth are together the second leading cause of death among 15- to 19-year-old girls globally, putting them at the highest risk of dying or suffering serious lifelong injuries as a result of pregnancy.”²⁹ In particular, “girls under 15 years of age face five times the danger.”³⁰

At the same time, Venezuela’s legislative framework severely limits reproductive healthcare. The voluntary termination of pregnancy is permitted only in cases of threat to the life of the mother, with no exceptions made for rape or incest. Article 430 of the Penal Code criminalizes the voluntary termination of pregnancy and imposes a punishment of six months to two years imprisonment on women who undergo abortions.³¹ Under Article 431, helping a woman voluntarily obtain an abortion is a criminal offense that carries a sentence of twelve to thirty months in prison, with three to five years levied if the woman died as a result of the procedure, and four to six years if the woman died and the methods used were “more dangerous than those consented to” by the woman.³² Article 433 provides a penalty enhancement for medical professionals who carry out or assist in terminating pregnancies and an exception that no penalty will be incurred if a doctor does so to save the life of the woman.³³ Article 434, reflecting patriarchal norms, provides for

²⁵ Human Rights Watch, “World Report 2021: Venezuela”, 2021.

²⁶ See, e.g., New York Times, “Venezuelan Women Lose Access to Contraception, and Control of their Lives”, February 20, 2021.

²⁷ UNFPA, “State of World Population 2022: Seeing the Unseen”, pg. 130.

²⁸ *Id.*, pg. 126.

²⁹ Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, U.N. Doc. A/HRC/32/44, April 8, 2016, para. 34. Note: The working group’s name was changed to its current form when its mandate was renewed in June 2019.

³⁰ Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, U.N. Doc. A/HRC/38/46, May 14, 2018, para. 31.

³¹ Penal Code, Article 430: The woman who intentionally aborts, making use of means employed by herself or by a third party, with her consent, will be punished with imprisonment from six to two years.

³² Penal Code, Article 431: Whoever has caused the abortion of a woman, with her consent, will be punished with imprisonment from twelve to thirty months. If, as a consequence of the abortion and the means used to carry it out, the death of the woman is caused, the penalty will be imprisonment from three to five years; and it will be from four to six years, if death occurs through means more dangerous than those consented to by her. Note: Article 432 imposes harsher sentences on anyone who procures an abortion against the woman’s will.

³³ Penal Code, Article 433: When the culprit of any of the crimes provided for in the preceding articles is a person who exercises the art of healing or any other profession or art regulated in the interest of public health, if said person has indicated, facilitated or used means with which the abortion in which death has occurred, the legal penalties will be applied with the increase of one sixth. The sentence will always result

a reduction in penalties by one-third to two-thirds if a man procures an abortion to save his honor or the honor of his female relative.³⁴

While a narrow exception to save the life of the mother is provided for in the Penal Code, the process of actually obtaining exceptional authorization to terminate a pregnancy is difficult: a doctor must provide a diagnosis that the pregnancy is life-threatening and a hospital ethics committee must subsequently approve the procedure.³⁵ Moreover, there is little public information about how to obtain authorization, and there are reportedly few doctors willing to provide one.³⁶ Thus, in reality, abortions are nearly impossible to obtain even where they are protected by law.

With few legal options available, women and girls have sought abortions outside of the formal healthcare system to terminate unwanted or dangerous pregnancies. The precarious humanitarian context has made this particularly dangerous; civil society organizations “estimate that 16% of maternal deaths in the country result from unsafe abortions,” with the figure increasing “by up to 60% in rural and indigenous communities.”³⁷

UN and regional bodies have repeatedly voiced concerns about Venezuela’s restrictive abortion laws.³⁸ Although Venezuela had not applied those provisions in practice for many

in the suspension of the exercise of the art or profession of the culprit, for time equal to the sentence imposed. The doctor who causes the abortion as an indispensable means to save the life of the woman will not incur any penalty.

³⁴ Penal Code, Article 434: The penalties established in the preceding articles will be reduced in the proportion of one to two thirds ... in the event that the perpetrator of the abortion has committed it to save his own honor or the honor of his wife, his mother, his descendant, his sister or his adopted daughter.

³⁵ New York Times, “The only ones arrested after a child’s rape: the women who helped her”, April 13, 2021. Available at <https://www.nytimes.com/2021/04/13/world/americas/venezuela-abortion-assault.html>. The President of the national obstetric and gynecological association describes the process as “engorroso” or cumbersome, with few women going through it.

³⁶ Id.

³⁷ Genesis Luigi-Bravo and Roopan Kaur Gill, “Safe abortion within the Venezuelan complex humanitarian emergency: understanding context as key to identifying the potential for digital self-care tools in expanding access”, *Sexual Reproductive Health Matters*, v.29(3), May 20, 2022 [citing *Equivalencias en Acción, Mujeres al Límite, “Derechos de Las Mujeres de Cara al Agravamiento de La Emergencia Humanitaria Compleja en Venezuela”*, 2019. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9132459/#:~:text=Data%20gathered%20by%20civil%20society,is%20due%20to%20unsafe%20abortion.&text=The%20SRHR%20context%20has%20also,flee%20from%20gender%2Dbased%20violence>].

³⁸ Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations*, U.N. Doc. CEDAW/C/VEN/CO/7-8, November 14, 2014, para. 30 [“The Committee is deeply concerned about ... The restrictive abortion law forcing women to resort to unsafe abortion, which often damages the health of the pregnant woman and sometimes results in death”]; Human Rights Committee, *Concluding Observations*, U.N. Doc. CCPR/C/VEN/CO/4, 2015, para. 10 [The Committee “notes with concern that voluntary termination of pregnancy, except when it is essential in order to save a woman’s life, is still an offence under the Criminal Code, which leads pregnant women to seek clandestine abortions that endanger their lives and health ... the Committee recommends that the State party amend its legislation to establish exceptions to the general prohibition of non-therapeutic abortions and see to it that women do not resort to clandestine abortions under unsatisfactory conditions that may endanger their lives and health”]; Organization of American States, “IACHR expresses concern over lack of access to sexual and reproductive health services in Venezuela”, April 6, 2021.

years,³⁹ the criminal proceedings against Vannesa Rosales in 2020 illustrate how an unofficial policy can be reversed at any time, leaving women and girls vulnerable to criminalization. The case further shows how the authorities use the legal system to target community activists like Ms. Rosales.

Procedural History

Vannesa Rosales is a women's human rights defender and schoolteacher in the community of Pueblo Nuevo in Venezuela.⁴⁰ She is active in community initiatives, including providing "meals, workshops and emotional support,"⁴¹ advocating for sexual and reproductive rights and the decriminalization of abortion.

On October 11, 2020, Ms. Rosales was approached by the mother of one of her former students, KS (name omitted). KS's mother had been raising KS and her seven siblings alone after her husband was killed in 2016. The family lived in conditions of extreme poverty and relied on small remittances sent home by an older sibling living in Colombia.⁴²

KS's mother sought Ms. Rosales's assistance to terminate KS's pregnancy: 13-year-old KS had allegedly been raped on multiple occasions by a 52-year-old neighbor, Carlos Alberto Teran, and had become pregnant as a result.⁴³ Ms. Rosales gave KS misoprostol, a medication used commonly and legally in other countries.⁴⁴

The next day, on October 12, KS was taken by her mother to the hospital for a curettage procedure.⁴⁵ As reported by the Independent International Factfinding Mission on the Bolivarian Republic of Venezuela:

While the girl was in hospital for examination after the termination, her mother went to CICPC⁴⁶ to report her daughter's rape. CICPC officers went to the hospital where they interrogated the girl, alone and against her will. The girl later told adults that a female CICPC officer covered her mouth when she tried to scream for help and told her that they could detain her for not cooperating. In these conditions, the

³⁹ Human Rights Committee, Concluding Observations, U.N. Doc. CCPR/C/VEN/CO/4, 2015, para. 10 [The UN Human Rights Committee welcomed the "State party's statement that the criminal provisions concerning abortion are not applied in practice."]; Mujeres al Límite, "Derechos de Las Mujeres de Cara al Agravamiento de La Emergencia Humanitaria Compleja en Venezuela", 2019, pg. 34.

⁴⁰ Front Line Defenders, "Vannesa Rosales". Available at

<https://www.frontlinedefenders.org/en/case/upcoming-hearing-of-woman-defender-vannesa-rosales>.

⁴¹ New York Times, "The only ones arrested after a child's rape: the women who helped her", April 13, 2021.

⁴² Id.

⁴³ Id.; El País, "Una activista venezolana presa por ayudar a una menor violada a abortar" [A Venezuelan activist imprisoned for helping a raped minor to abort], January 5, 2021.

⁴⁴ OHCHR Communication, Communication on Rosales Case, U.N. Doc. AL VEN 1/21, February 11, 2021, pg. 4 [hereinafter "OHCHR Communication"]. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26005>.

⁴⁵ Id.

⁴⁶ Cuerpo de Investigaciones Científicas, Penales y Criminalísticas [Corps for Scientific, Penal and Criminal Investigations].

girl told the police the name of the man who raped her and said that her mother and Ms. Rosales had given her the medication.⁴⁷

Notably, Article 541 of the Organic Code for the Protection of Boys, Girls and Adolescents stipulates that “an adolescent that is investigated or detained must be informed of the motives of the investigation ...[and] also must be informed of their right to not incriminate themselves and solicit the immediate presence of their parents, representative or guardian, and their defense attorney.”⁴⁸

The CICPC officers “proceeded to arrest ... the girl’s mother and Ms. Rosales, without warrants, and to search Ms. Rosales’s house, seizing items belonging to Ms. Rosales and her partner without a warrant.”⁴⁹ The Venezuelan Criminal Procedure Code requires prior authorization and a written order from a judge (in other words, a warrant) for searches of residences.⁵⁰ According to the Acta de Investigación Penal (Criminal Investigation Report), the officers also conducted a physical search of the two women and confiscated electronic devices, pamphlets on abortion care, and pills, among other items.⁵¹ The arrests of Ms. Rosales and the girl’s mother were characterized by the authorities as *in flagrante delicto*. Under the Venezuelan Criminal Procedure Code, arrests may be carried out *in flagrante delicto* while a suspected crime is in progress or immediately after, or while a suspect is being pursued by authorities.⁵² Of note, Article 44 of the Constitution prohibits arrests and detentions without a court order, except for cases of *in flagrante delicto*.⁵³

Ms. Rosales and KS’s mother were both taken to the Mérida Penitentiary Center.⁵⁴ The police also arrested the alleged rapist, Carlos Alberto Teran, at his domicile and transported him to the police station. He was released soon after on the basis that he had not been caught in the act of sexually abusing KS (*lapso de flagrancia*).⁵⁵ However, Ms. Rosales and KS’s mother remained detained.

⁴⁷ Human Rights Council, Detailed findings of the independent international factfinding mission on the Bolivarian Republic of Venezuela, U.N. Doc. A/HRC/48/CRP.5, September 16, 2021, para. 221 [hereinafter “Findings of the Independent International Factfinding Mission”]. See, also, OHCHR Communication, pg. 4.

⁴⁸ Organic Code for the Protection of Boys, Girls and Adolescents, Article 541: “An adolescent that is investigated or detained must be informed of the motives of the investigation and the authority responsible for the investigation. They also must be informed of their right to not incriminate themselves and solicit the immediate presence of their parents, representative or guardian, and their defense attorney.”

⁴⁹ Findings of the Independent International Factfinding Mission, para. 221. See, also, OHCHR Communication, pg. 4.

⁵⁰ Criminal Procedure Code, Article 196.

⁵¹ Acta de Investigación Penal, October 12, 2020; OHCHR Communication, pg. 4.

⁵² Criminal Procedure Code, Article 234, 2012.

⁵³ Constitution of the Bolivarian Republic of Venezuela, Article 44, 1999.

⁵⁴ OHCHR Communication, pgs. 4-5.

⁵⁵ Acta de Investigación Penal, October 12, 2020; Findings of the Independent International Factfinding Mission, para. 221.

On October 16,⁵⁶ four days after Ms. Rosales and KS's mother were arrested, they were brought before a judge. The Criminal Procedure Code stipulates that a person apprehended *in flagrante delicto* must be brought before a control judge within 48 hours of the arrest.⁵⁷

At the initial appearance hearing (*audiencia de presentacion*), the control judge “sustained the manner of their arrest as *in flagrante delicto* and accepted the search without a warrant,” despite the requirement under the Criminal Procedure Code that searches of residences require prior judicial authorization.⁵⁸ The prosecution accused both Ms. Rosales and KS's mother of inducing an abortion under Article 431 of the Penal Code, which reads in part: “Whoever provokes the abortion of a woman, with her consent, shall be punished with imprisonment from twelve to thirty months.”⁵⁹ Article 217 of the Child and Adolescent Protection Law – in which the “fact that the victim is a child or adolescent constitutes an aggravating circumstance of any punishable act” – was also applied, increasing the potential sentences of both women.⁶⁰

The judge then requalified the charges against both women, adding new charges and applying aggravating circumstances.⁶¹ First, the judge requalified the crime of provoking a consensual abortion to the more serious offense of forcibly inducing an abortion under Article 432 of the Penal Code, which reads in part: “Whoever has procured the abortion of a woman, without her consent or against her will ... shall be punished with imprisonment from fifteen months to three years. And if the abortion is carried out, the imprisonment shall be from three to five years.”⁶² In explaining the requalification, the judge referred to KS's young age, despite age not being an element of either Article 431 or 432.⁶³ With respect to consent, the sole element distinguishing the two provisions, nothing in available documentation indicated that KS did not consent to taking

⁵⁶ Note: The OHCHR Communication states that the hearing took place on October 17, 2020.

⁵⁷ Criminal Procedure Code of Venezuela, Article 356.

⁵⁸ Findings of the Independent International Factfinding Mission, para. 221. Also, see, Acta de La Audiencia de Presentación [Minutes of the Initial Appearance Hearing], October 16, 2020.

⁵⁹ Acta de La Audiencia de Presentación, October 16, 2020.

⁶⁰ Law on Child and Adolescent Protection, Article 217: “Aggravating circumstance. The fact that the victim is a child or adolescent constitutes an aggravating circumstance of any punishable act, for the purposes of calculating the penalty.”

⁶¹ These changes were set forth in the Acta de la Audiencia de Presentación, October 16, 2020. Notably, the Fundamentación de la Jueza: Auto de Calificación de Aprehesión en Flagrancia y Medida Prevativa de Libertad [judicial reasoning on the order of apprehension in flagrante delicto and preventative measure of liberty] [hereinafter “Fundamentación de la Jueza”], continued to refer to Article 431 of the Penal Code, while also referring to the charges added by the judge in an apparent textual error.

⁶² Penal Code, Article 432: Whoever who has procured the abortion of a woman, without her consent or against her will, or directed to produce it, will be punished with imprisonment from fifteen months to three years. And if the abortion is carried out, the imprisonment will be from three to five years. If due to the abortion or the means used to procure it, death occurs for women, the penalty shall be imprisonment from six to twelve years. If the culprit was the husband, the penalties established in this article will be increased in one sixth.

⁶³ Fundamentación de la Jueza.

misoprostol, nor did the judge refer to a lack of consent in the reasoning regarding requalification.

Second, the judge added two charges against both women⁶⁴ under Article 286⁶⁵ of the Penal Code, which criminalizes conspiracy and provides for a sentence of between two and five years, and Article 86,⁶⁶ which enhanced the penalties to be imposed.⁶⁷ The judge then charged Ms. Rosales alone with violating Article 37 of the Law against Organized Crime and Financing of Terrorism, which proscribes criminal association (i.e. association with an organized criminal group) and carries a potential sentence of six to ten years.⁶⁸ With the new charges, Ms. Rosales faced more than ten years in prison for providing reproductive health assistance to a child rape victim upon her mother's request.

In La Fundamentacion de la Jueza (the judicial reasoning), the judge referred to the criminal investigation and search reports that detailed items seized in the search of Ms. Rosales's domicile: five green brochures that read, "Do you have an undesired pregnancy?"; 20 small rectangular papers that read "Abortion: free and secure information by women for women"; and bags of pills.⁶⁹ The ruling contained no reasoning as to why the items seized would support requalification or addition of charges. As noted above, the judge referred only to KS's age.

The judge then imposed pretrial detention on Ms. Rosales based on three grounds: 1) Ms. Rosales was a presumed flight risk because she faced a minimum sentence of eight years imprisonment (the judge did not explain how Ms. Rosales specifically was at risk of flight);⁷⁰ 2) the evidence obtained during the search, including her postings on the site Safe2Choose, "an online informational and counseling platform that supports women who

⁶⁴ These changes were set forth in the Acta de la Audiencia de Presentación for October 16, 2020 as well as in the Fundamentación de la Jueza, which was dated October 14, 2020 and October 16, 2020. It is unclear which is the correct date for the Fundamentación de la Jueza.

⁶⁵ Penal Code, Article 286: "When two or more persons associate for the purpose of committing crimes, each of them shall be punished, for the sole fact of association, with imprisonment from two to five years."

⁶⁶ Penal Code, Article 86: "A person guilty of two or more offenses, each of which carries a penalty of imprisonment, shall only be sentenced to that corresponding to the most serious offense, but with an increase of two thirds of the time corresponding to the penalty of the other or others."

⁶⁷ The Acta de la Audiencia de Presentación contained what appears to be a typographical error, referring to Article 86 of the Penal Code for "*agavillamiento*" or conspiracy, instead of Article 286, which actually criminalizes conspiracy.

⁶⁸ Law against Organized Crime and Financing of Terrorism, Article 37: "Whoever forms part of an organized criminal group shall be punished for the mere fact of association with imprisonment of six to ten years."

⁶⁹ Fundamentación de la Jueza.

⁷⁰ In Venezuela, a judge's decision to order pre-trial detention must be "duly substantiated" and "1) include a crime that warrants deprivation of liberty; 2) well-founded evidence that the accused was the author or participant in the crime; and 3) a reasonable presumption of risk of flight or obstruction of evidence." Independent International Factfinding Commission, citing Criminal Procedure Code, Article 236. In assessing flight risk, a judge should consider: 1. Roots in the country, determined by the domicile, habitual residence, seat of the family, of their business or work and the facilities to leave the country definitively or remain hidden. 2. The penalty that could be imposed in the case. 3. The extent of the damage caused. 4. The conduct of the accused during the proceedings, or in other previous proceedings, to the extent that he or she is willing to submit to criminal prosecution. 5. The pre-criminal conduct of the accused or accused." Criminal Procedure Code, Article 237.

want an abortion”⁷¹ (however, the ruling did not explain the relevance of this material); and 3) that the “victim” was young.⁷² Notably, the second ground invoked by the judge suggests that the judge considered Ms. Rosales’s reproductive rights advocacy in the decision to order pretrial detention. The judge also imposed pre-trial detention on KS’s mother based on similar grounds.

KS’s mother was detained in the Mérida Penitentiary Center for twenty-three days after being arrested.⁷³ On November 4, 2020, she was released on humanitarian grounds on the basis that she was a single parent to eight children, several of whom were minors, including KS.⁷⁴ Ms. Rosales, however, remained in detention.

On December 9, 2020, Ms. Rosales’s lawyers requested that substitute precautionary measures be imposed instead of detention.⁷⁵ On December 14, 2020, the preliminary hearing scheduled for Ms. Rosales’s and KS’s mother’s case was cancelled. No new date was scheduled, and Ms. Rosales remained in detention.⁷⁶

In early January 2021, Ms. Rosales’s counsel took the case to the press.⁷⁷ After intensive media coverage and a grassroots campaign highlighting the prosecution and detention of Ms. Rosales, Venezuela’s Attorney General Tarek William Saab commented on the case on Twitter on January 10, posting an image of a request from the Public Ministry for an Interpol red alert for Carlos Alberto Teran (the alleged rapist) and an image of a warrant for his arrest.⁷⁸ As of the writing of this report in November 2022, the alleged rapist has not been apprehended or tried.

On January 11, 2021, the Third Criminal Court of Control of the State of Merida ordered Ms. Rosales released to house arrest.⁷⁹ In total, she spent three months in pretrial detention at the Mérida Penitentiary Center.

On February 11, 2021, six UN Special Procedures mandate holders issued a communication to the Venezuelan authorities expressing concern about the arbitrary detention of Vannesa Rosales and members of two other NGOs for their work on human

⁷¹ Safe2Choose. Available at <https://safe2choose.org/>.

⁷² Fundamentación de La Jueza.

⁷³ El País, “Una activista venezolana presa por ayudar a una menor violada a abortar” [A Venezuelan activist imprisoned for helping a raped minor to have an abortion], January 5, 2021.

⁷⁴ Id.; Note: KS’s father was killed in 2016. See New York Times, “The only ones arrested after a child’s rape: the women who helped her”, April 13, 2021.

⁷⁵ OHCHR Communication, pg. 5.

⁷⁶ OMCT, “Urgent Intervention: Criminalization of Vannesa Rosales, defender of sexual and reproductive rights”, January 1, 2021. Available at <https://www.omct.org/es/recursos/llamamientos-urgentes/venezuela-detenci%C3%B3n-arbitraria-de-la-membres%ADa-de-azul-positivo-y-allanamiento-de-su-sede-1-1>.

⁷⁷ See, e.g., OMCT, “Urgent Intervention: Criminalization of Vannesa Rosales, defender of sexual and reproductive rights”, January 1, 2021; El País, “Una activista venezolana presa por ayudar a una menor violada a abortar” [A Venezuelan activist imprisoned for helping a raped minor to abort], January 5, 2021.

⁷⁸ Twitter, two posts by @TarekWilliamSaab, January 10, 2021. Available at <https://twitter.com/TarekWilliamSaab/status/1348418491540500480>.

⁷⁹ OMCT, “Urgent Intervention: Criminalization of Vannesa Rosales, defender of sexual and reproductive rights”, January 25, 2021.

rights, including reproductive health rights.⁸⁰ The UN experts stated that they had received information indicating that “these detentions formed part of a tendency to intensify attacks against civil society organizations in Venezuela that presumptively operated within the legislative framework that criminalized the exercise of the right to [...] freedom of expression, among others.”⁸¹ The UN experts specifically mentioned the Law on Organized Crime and the Financing of Terrorism under which Ms. Rosales was charged, and expressed their concerns “regarding the criminalization of Ms. Vanessa Rosales for her legitimate work defending the sexual and reproductive rights of women and girls.”⁸²

On June 10, 2021, Ms. Rosales’s legal team filed a petition to the UN Working Group on Arbitrary Detention, arguing that Ms. Rosales’s pretrial detention was arbitrary for the following reasons: 1) the domestic criminal proceedings against her did not follow due process guarantees; 2) Ms. Rosales was arrested and prosecuted because of her work as a human rights defender; 3) the arrest was based on a discriminatory norm (the criminalization of abortion in Venezuela); and 4) that the preventative detention was not necessary, reasonable or proportional as Ms. Rosales did not have a criminal record and did not represent a threat to the outcome of the proceedings.⁸³

On July 21, 2021, the preliminary hearing in Ms. Rosales’s case took place – nearly eight months after charges were formally issued on November 30, 2020.⁸⁴ Under Article 327 of the Criminal Procedure Code, a preliminary hearing must be held within 20 days of charges being levied.⁸⁵

In light of international attention on the case, several federal prosecutors jointly appeared with local prosecutors at the preliminary hearing on July 21, 2021. The joint prosecution team sought to withdraw a majority of the charges and penalty enhancements. At the hearing, the prosecution dropped nearly all the charges against both women; however, the charge of procuring a woman’s abortion without her consent under Article 432 and the aggravating circumstance of a minor victim under Article 217 of the Child and Adolescent Protection Law were retained for Ms. Rosales and KS’s mother. In exchange for the reduction of charges and a suspended sentence, both women agreed to plead guilty. Ms. Rosales was released from house arrest and sentenced to community service.⁸⁶

⁸⁰ OHCHR, Communication on Rosales Case, U.N. Doc. AL VEN 1/21, February 11, 2021.

⁸¹ *Id.*, pg. 3.

⁸² *Id.*, pg. 6.

⁸³ AVESA, 100% Estrogeno, and Women’s Link Worldwide, Petition to the UN Working Group on Arbitrary Detention, Arbitrary detention of human rights defender Vannesa Rosales in Venezuela, June 10, 2021.

⁸⁴ OHCHR Communication, pg. 5; Acta de Audiencia Preliminar, July 21, 2021.

⁸⁵ Article 327 of the Criminal Procedure Code reads in pertinent part: “Once the charges have been filed, the Judge shall summon the parties to an oral hearing, which shall be held within a period of not less than ten days or more than twenty days. If the hearing has to be postponed, it shall be rescheduled within a period not exceeding twenty days.”

⁸⁶ Acta de Audiencia Preliminar, July 21, 2021.

Ms. Rosales's arrest and prosecution had an immediate chilling effect on the activities of local women's networks and activists who support women and girls seeking to end their pregnancies. Facing credible risks of arrest and prosecution, they ceased providing assistance and discarded any medication and informational leaflets in their possession.⁸⁷ According to staff at a feminist non-profit, this lasted for nearly a year after Ms. Rosales's arrest. They eventually began providing support again but operated with heightened security measures, which has limited the number of women and girls they can reach and assist.⁸⁸

The available documentation indicates that multiple procedural violations occurred throughout the proceedings, as will be discussed further below, including:

- arbitrary detention, as the judge's order placing Ms. Rosales in pretrial detention did not make a duly reasoned, individualized assessment as to why detention was reasonable, necessary and proportionate, and also referred to irrelevant grounds;⁸⁹
- the use of illegally obtained evidence, as KS was questioned without her mother present, and the search of Ms. Rosales's residence was executed without a warrant;
- disproportionately harsh charges, with the judge requalifying the charges without reasoned justification, including adding an offense under the Law against Organized Crime and Financing of Terrorism;
- unjustified procedural delays (of both the *flagrante delicto* hearing and the preliminary hearing).⁹⁰

The Independent International Fact-Finding Mission also found that Ms. Rosales was "denied visits from her legal team during the three months she was detained," and that the court "denied her lawyers access to the case file for over a month and refused to provide the lawyers with a copy until January 20, 2021, preventing their full review of the record of the initial appearance and the information sustaining the charges against her."⁹¹

⁸⁷ Conversation with staff at a Venezuelan feminist non-profit, November 22, 2022. See, also, Reuters, "Venezuela women's groups halt abortion services after activist arrest", January 11, 2021. Available at <https://www.reuters.com/article/us-venezuela-abortion/venezuela-womens-groups-halt-abortion-services-after-activist-arrest-idUSKBN29G2O9>.

⁸⁸ Conversation with staff at a Venezuelan feminist non-profit, November 22, 2022.

⁸⁹ The UN Human Rights Committee has noted that with respect to detention, the concept of "arbitrariness" must be "interpreted broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of . . . reasonableness, necessity and proportionality." In evaluating the reasonableness and necessity of pretrial detention, courts must undertake an "individualized determination" of the accused's particular circumstances. Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, paras. 12, 38.

⁹⁰ As described in the Procedural History.

⁹¹ Independent International Fact-Finding Mission, para. 312. Also, see, OMCT, "Urgent Intervention: Criminalization of Vannesa Rosales, defender of sexual and reproductive rights", January 1, 2021.

METHODOLOGY



A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice's TrialWatch initiative, the American Bar Association Center for Human Rights monitored criminal proceedings against Vannesa Rosales through a review of documents from the case file and court transcripts. The security situation in Venezuela is such that it was unfeasible to monitor proceedings in person. Subsequently, information about the harassment of Ms. Rosales's defense lawyers came from the counsel themselves. These allegations are consistent with documented patterns of retaliation against human rights lawyers in Venezuela.

B. THE ASSESSMENT PHASE

Staff at the ABA Center for Human Rights reviewed the criminal investigation report, the minutes of the initial appearance hearing, the judicial reasoning on the order of apprehension *in flagrante delicto* and preventative measure of liberty, the minutes of the preliminary hearing, and public reports on Ms. Rosales's case. To evaluate the trial's fairness and arrive at a grade, the TrialWatch Expert reviewed an analysis of the case prepared by staff at the ABA Center for Human Rights. She concluded that:

This case encompassed multiple violations of the right to due process, the protections to which children are entitled, the rights to health and life, reproductive rights in general, the right to freedom of expression, and the protections to which human rights defenders are entitled. It clearly demonstrates how the stigma associated with the criminalization of abortion can affect the conduct of proceedings. If not for the public attention this case garnered, the State would have been successful in weaponizing the criminal system against Ms. Rosales. Stigma related to abortion, providing information about reproductive healthcare, and to gender stereotypes, is at the root of why Ms. Rosales was even accused in the first place, contravening human rights standards.

In providing information on access to safe abortion and general reproductive health, acts that are protected under international law, Ms. Rosales was acting as a sexual and reproductive rights advocate and thereby as a human rights defender. The State's criminalization of her actions, including the distribution of information about sexual and reproductive rights, not only violated her right to freedom of expression but also served as an attempt to intimidate a human rights defender. In particular, the disproportionate charges of conspiracy and organized crime appear to have been a tactic to intimidate and harass Ms. Rosales.

Given that KS was 13 years old when she was raped and became pregnant, the pregnancy posed a risk to her life and health. As the World Health Organization and other international organizations have recognized, pregnancy under the age of 15 puts girls at

a significantly higher risk of suffering dangerous complications. Given this reality, KS should have been provided an abortion without hesitation or delay, even under current Venezuelan law. However, in this case, State authorities responded to her efforts to seek care after a self-managed abortion by criminalizing those who helped her obtain potentially lifesaving abortion medication, violating the range of internationally protected rights discussed above, creating a chilling effect on abortion assistance, and thus putting the lives and health of other girls at risk.

Additionally, this case shows how intersectional discrimination occurs. KS was a 13-year-old girl and a rape victim living in extreme poverty. As she was a child, a victim of sexual violence, and socioeconomically vulnerable, the State was required to provide her with special protections under international human rights law. Instead, KS's circumstances, which resulted in her seeking post-abortion care at a public hospital and thus exposing herself and her family to prosecution, were used against those trying to support her (her mother and Ms. Rosales). Even though the State did not directly charge KS, it did prosecute the two individuals who attempted to provide her with the care that she needed, illustrating the ways in which girls in vulnerable situations like KS are particularly impacted by Venezuela's restrictive laws as well as by Venezuela's failure to protect such children under its international obligations.

Although Ms. Rosales is no longer detained, she spent three months in pretrial detention and seven months in house arrest, and now has a criminal conviction for an offense she should never have been charged with in the first place, giving this case a "D" under the grading methodology found in the Annex.

ANALYSIS



A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (ICCPR), which Venezuela signed on June 24, 1969 and ratified on May 10, 1978; jurisprudence from the Human Rights Committee, tasked with monitoring implementation of the ICCPR; reports and jurisprudence from the Inter-American Commission on Human Rights (IACHR), tasked with monitoring the human rights situation in the Americas; the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Venezuela signed on June 24, 1969 and ratified on May 10, 1978; jurisprudence from the Committee on Economic, Social, and Cultural Rights, tasked with monitoring implementation of the ICESCR; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Venezuela signed on July 17, 1980 and ratified on May 2, 1983; jurisprudence from the UN Committee on the Elimination of Discrimination against Women, tasked with monitoring implementation of CEDAW; the Convention on the Rights of the Child (CRC), which Venezuela signed on January 26, 1990 and ratified on February 28, 1990; the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), which Venezuela signed on June 6, 1994 and ratified on January 16, 1995; reports and publications of the Follow-up Mechanism to the Belém de Pará Convention (MESECVI); the United Nations Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders); reports issued by various UN Special Procedures; and widely-accepted principles on the role of lawyers. This report also draws upon the jurisprudence of the European Court of Human Rights (ECtHR), which the Human Rights Committee has deemed relevant for interpreting provisions of the ICCPR.⁹²

Although Venezuela was previously a party to the American Convention on Human Rights (ACHR), the government under President Hugo Chavez denounced the treaty in 2012, with the denunciation taking effect in September 2013.⁹³ Nevertheless, Venezuela remained “subject to the jurisdiction of the Inter-American Commission on Human Rights and bound by the obligations established in the OAS Charter and the American Declaration of the Rights and Duties of Man” so long as it remained a State Party to the OAS.⁹⁴ In 2017, the government under President Maduro initiated the two-year process

⁹² For example, when interpreting the provisions of the ICCPR through its General Comments, the Human Rights Committee has relied on decisions made by the ECtHR. See, e.g., Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, fns. 15, 18, 28, 52, 61, 65, 73-75, 99, 118, 122, 132; Human Rights Committee, General Comment No. 36, U.N. Doc. CCPR/C/GC/36, September 3, 2019, fns. 5, 6, 32, 64, 86, 88, 92, 104, 126-129, 136, 164, 215, 217.

⁹³ Organization of American States, “IACHR Deeply Concerned over Result of Venezuela’s Denunciation of the American Convention”, September 10, 2013.

⁹⁴ *Id.*

to withdraw from the OAS, which was set to conclude in April 2019. Just before the withdrawal would have taken effect, however, the “opposition-controlled National Assembly, which OAS member states recognized as the legitimate government of Venezuela, halted the withdrawal in February 2019 and appointed a representative to the OAS in April 2019.”⁹⁵ As of the writing of this report in November 2022, the OAS continues to consider Venezuela a State Party.

With respect to the ACHR,⁹⁶ the Inter-American Court of Human Rights (IACtHR), stated in a case decided in November 2020 that Venezuela had withdrawn from the ACHR in 2013.⁹⁷ The OAS, however, recognizes that the state of Venezuela ratified the ACHR in July 2019.⁹⁸ Nevertheless, the IACtHR in a recent Advisory Opinion reiterated “the importance of its jurisprudence for all Member States of the OAS, in as much as it enriches the content and scope of inter-American law. Moreover, it provides authorized hermeneutic guidelines to ensure the effective fulfillment of State obligations related to the observance of human rights derived from the OAS Charter, the American Declaration, and other inter-American treaties and instruments for the protection of human rights in the American continent.”⁹⁹

Last, this report references relevant provisions in Venezuelan law, including the Penal Code, the Criminal Procedure Code, the Law on Organized Crime and Financing of Terrorism, and the Organic Code for the Protection of Boys, Girls and Adolescents.

⁹⁵ Congressional Research Service, “Organization of American States: In Brief”, September 1, 2022, pg. 3. Available at <https://crsreports.congress.gov/product/pdf/R/R47230>. See, also, AP News, “Support for Venezuela’s opposition dwindling at OAS”, October 6, 2022. Available at <https://apnews.com/article/business-venezuela-colombia-peru-caribbean-99f3d88d94587a0d6472f15437f7bcd2>.

⁹⁶ See, e.g., Blog of the European Journal of International Law, “Don’t Leave Me This Way: Regulating Treaty Withdrawal in the Inter-American Human Rights System”, March 5, 2021. Available at <https://www.ejiltalk.org/dont-leave-me-this-way-regulating-treaty-withdrawal-in-the-inter-american-human-rights-system/>.

⁹⁷ Inter-American Court of Human Rights, *Mota Abarullo y otros v. Venezuela*, November 18, 2020. Note: The cause of action in the case occurred in 2005, before Venezuela had withdrawn from the ACHR.

⁹⁸ Organization of American States, “American Convention on Human Rights: Signatories and Ratifications.” Available at https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm.

⁹⁹ Inter-American Court of Human Rights, Advisory Opinion OC-26/20, November 9, 2020, para. 116.

B. SEXUAL AND REPRODUCTIVE RIGHTS

Sexual and reproductive rights implicate a range of intersecting rights – most notably, the rights to life, health, and non-discrimination. Venezuela is obligated to uphold these rights under numerous treaties it has ratified, including the ICCPR, ICESCR, CEDAW, CRC, and the Convention of Belém do Pará. Treaty body interpretations of these instruments as well as communications issued directly to Venezuela make clear that Venezuela’s legal framework on abortion violates the rights to life and health and the prohibition against discrimination. These issues were reflected in the case against Vannesa Rosales and the criminalization of the assistance she provided to KS, an impoverished child rape victim.

Right to Life and Right to Health

Article 6 of the ICCPR recognizes that “[e]very human being has the right to life,” and stipulates that “[t]his right shall be protected by law.”

Every individual retains the right to life upon becoming pregnant: the Human Rights Committee has clarified the scope of States’ obligations to protect the right to life, stating that States parties “may adopt measures designed to regulate voluntary termination of pregnancy” but that “restrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, [or] subject them to physical or mental pain or suffering.”¹⁰⁰ As such, in the context of the voluntary termination of pregnancy, there are limitations on the ability of States parties to impose regulations as well as positive obligations:

States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is not viable. In addition, States parties may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions, and they should revise their abortion laws accordingly.¹⁰¹

The Committee has further stated that States should not apply “criminal sanctions to women or girls who undergo abortion or to medical service providers who assist them.”¹⁰²

Article 12 of the ICESCR, which enshrines the right to health,¹⁰³ encompasses the right to sexual and reproductive health. The Committee on Economic, Social and Cultural

¹⁰⁰ Human Rights Committee, General Comment No. 36, U.N. Doc. CCPR/C/GC/36, September 3, 2019, para. 8.

¹⁰¹ Id.

¹⁰² Id.

¹⁰³ ICESCR, Article 12.

Rights has stated that the “right to sexual and reproductive health is an integral part of the right to health,”¹⁰⁴ and has thus called on States parties to “reform[] laws that impede the exercise of the right to sexual and reproductive health,” including “laws criminalizing abortion.”¹⁰⁵

Regionally, the Inter-American Commission on Human Rights has called on all states in the region to “adopt immediate measures to ensure that women can fully exercise all sexual and reproductive rights [including] rights related to non-discrimination, to life, to personal integrity, to health, to dignity, and to access to information, among others,” confirming that “sexual and reproductive rights form part of the human right to integral health.”¹⁰⁶ As described by the Commission, in addition to *de jure* restrictions, *de facto* barriers to accessing reproductive health services, such as a lack of information, can constitute violations of the rights to life and health.¹⁰⁷

The Convention on the Rights of the Child also contains relevant provisions that protect the right to life (Article 6) and the right to health (Article 24).¹⁰⁸ The UN Committee on the Rights of the Child has established that State parties’ obligations under Article 6 to ensure the right to life, survival and development for all children includes “providing ... adequate sexual and reproductive health services.”¹⁰⁹ Additionally, in its General Comment on the implementation of the rights of the child during adolescence, the Committee urged States to “decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions.”¹¹⁰ The Committee has further recommended that “States ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal.”¹¹¹

¹⁰⁴ Committee on Economic, Social, and Cultural Rights, General Comment No. 22, U.N. Doc. E/C.12/GC/22, May 2, 2016, para. 1.

¹⁰⁵ *Id.*, para. 40.

¹⁰⁶ Inter-American Commission on Human Rights, “IACHR Urges All States to Adopt Comprehensive, Immediate Measures to Respect and Protect Women’s Sexual and Reproductive Rights”, October 23, 2017.

¹⁰⁷ *Id.*

¹⁰⁸ Convention on the Rights of the Child, Article 6: 1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child”; Article 24: “1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

¹⁰⁹ Committee on the Rights of the Child, Concluding Observations: Namibia, U.N. Doc. CRC/C/NAM/CO/2-3, October 16, 2012, para. 35.

¹¹⁰ Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, U.N. Doc. CRC/C/GC/20, December 6, 2016, para. 60.

¹¹¹ Committee on the Rights of the Child, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), U.N. Doc. CRC/G/GC/15, April 17, 2013, para. 70.

Right to be Free from Discrimination

Sexual and reproductive rights also implicate the fundamental right to be free from discrimination. Article 2(1) of the ICCPR mandates that States Parties treat all individuals equally, regardless of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 3 requires States Parties to “undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant,” while Article 26 provides that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) complements the right to equality set forth in the ICCPR. Article 2 obliges States to eliminate discriminatory practices by, among other things, “establish[ing] legal protection of the rights of women on an equal basis with men and ... ensur[ing] through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”; “refrain[ing] from engaging in any act or practice of discrimination against women and ... ensur[ing] that public authorities and institutions shall act in conformity with this obligation”; “tak[ing] all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”; and “tak[ing] all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”¹¹²

Article 12 of CEDAW requires States “to eliminate discrimination against women in their access to health-care services throughout the life cycle, particularly in the areas of family planning, pregnancy and confinement and during the post-natal period.”¹¹³ The CEDAW Committee has affirmed that access to health care includes reproductive healthcare, and that it is “discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women.”¹¹⁴ It has expressed concern over laws that criminalize abortion and has further commented that State Parties must “refrain from obstructing action taken by women in pursuit of their health goals,” noting that “barriers to women’s access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.”¹¹⁵ Similarly, the Committee on the Rights of the Child has repeatedly urged states to eliminate *de facto* discrimination against girls,¹¹⁶ and to make

¹¹² CEDAW, Article 2(c)(d)(e)(f). Note: In General Recommendation No. 25, the Committee on the Elimination of Discrimination against Women clarified that “[i]ntersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2.”

¹¹³ Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, U.N. Doc. A/54/38/Rev.1, 1999, para 2.

¹¹⁴ *Id.*, paras. 11, 31(c) [recommending that States amend “legislation criminalizing abortion”].

¹¹⁵ *Id.*, para. 14.

¹¹⁶ See Committee on the Rights of the Child, Concluding Observations: Liechtenstein, U.N. Doc. CRC/C/15/Add.143, 2001, para. 21; Committee on the Rights of the Child, Concluding Observations: El Salvador, U.N. Doc. CRC/C/SLV/ CO/3-4, 2010, para. 28.

“health and related services” accessible to all children, “in law and in practice, without discrimination of any kind.”¹¹⁷

UN Special Procedures have commented extensively on discrimination and women’s access to sexual and reproductive healthcare. The UN Working Group on Arbitrary Detention has stated that a “normative framework that falls on only one gender and restricts women’s rights ... [is] discriminatory,” and that:

a law, sentence, or public policy that restricts the right to personal liberty by criminalizing conduct that is related to the consequences of a lack of access to and enjoyment of the highest attainable standard of health, obstetric violence, or that criminalizes the exercise of women’s reproductive rights, should be considered prima facie discriminatory.¹¹⁸

The UN Working Group on Discrimination against women and girls has similarly noted that:

[c]riminalization of behaviour that is attributed only to women is inherently discriminatory. So is denying women’s autonomous decision-making and access to services that only women require and failing to address their specific health and safety, including their reproductive and sexual health needs.”¹¹⁹

It has emphasized how criminalization of abortion harms women and girls:

[c]riminalization of termination of pregnancy is one of the most damaging ways of instrumentalizing and politicizing women’s bodies and lives, subjecting them to risks to their lives or health in order to preserve their function as reproductive agents and depriving them of autonomy in decision-making about their own bodies.¹²⁰

¹¹⁷ Committee on the Rights of the Child, General Comment No. 15, U.N. Doc. CRC/G/GC/15, April 17, 2013, para. 114.

¹¹⁸ Working Group on Arbitrary Detention, Opinion No. 68/2019, concerning Sara del Rosario Rogel García, Berta Margarita Arana Hernández, and Evelyn Beatriz Hernández Cruz (El Salvador) (advance edited version), U.N. Doc. A/HRC/WGAD/2019/68, March 4, 2020, para. 114.

¹¹⁹ Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, U.N. Doc. A/HRC/38/46, May 14, 2018, para. 32. See, also, Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, U.N. Doc. A/HRC/32/44, April 8, 2016, paras. 28-29 stating: “Denying women access to services which only they require and failing to address their specific health and safety, including their reproductive and sexual health needs, are inherently discriminatory and prevent women from exercising control over their own bodies and lives ... Denial of access to essential health services with respect to termination of pregnancy ... has particularly serious consequences.”

¹²⁰ Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, U.N. Doc A/HRC/32/44, April 8, 2016, para. 79.

Most recently, in September 2022, a group of UN experts¹²¹ reiterated that “[l]aws and policies that deny women and girls their sexual and reproductive health rights are inherently discriminatory.”¹²²

Inter-American bodies have likewise held that the right to be protected from discrimination encompasses the right to health services that only women and girls require because of their sex or gender and reproductive function.¹²³ The Inter-American Commission on Human Rights has stated, among other things, that:

[t]he absolute criminalization of abortion, including in cases where the woman’s life is at risk and when the pregnancy results from a rape or incest, imposes a disproportionate burden on the exercise of women’s rights and creates a context that facilitates unsafe abortions and high rates of maternal mortality.¹²⁴

The Committee of Experts of the Follow-Up Mechanism for the Convention of Belém do Pará (CEVI)¹²⁵ has called attention to the links between violence against women and girls and sexual and reproductive rights in the Declaration on Violence Against Women, Girls and Adolescents and their Sexual and Reproductive Rights. The CEVI declared that “the Convention of Belém do Pará ... expressly enshrine[s] the duty of States to adequately protect women and the duty to guarantee that women access health services free from discrimination.”¹²⁶ It also declared that State refusal to develop public policies and sexual and reproductive health services for women is a human rights violation and constitutes “institutional violence by the State.”¹²⁷ It recommended that all States:

[g]uarantee[] the sexual and reproductive health of women and their right to life, eliminat[e] unsafe abortion and establish[] laws and policies that enable the termination of pregnancy, at the very least in the following cases: i) risk to the life

¹²¹ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on violence against women and girls, experts from the Working Group on discrimination against women and girls, and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

¹²² UN Office of the High Commissioner, “Women’s and girls’ reproductive choices must be respected, UN experts say”, September 23, 2022. Available at <https://www.ohchr.org/en/statements/2022/09/womens-and-girls-reproductive-choices-must-be-respected-un-experts-say-0>.

¹²³ See, e.g., Inter-American Commission on Human Rights, “IACHR Urges All States to Adopt Comprehensive, Immediate Measures to Respect and Protect Women’s Sexual and Reproductive Rights”, October 23, 2017 [stating that countries have “a fundamental obligation to ensure timely and adequate access to health services that only women, female adolescents, and girls need because of their sex/gender and reproductive function, free from all forms of discrimination and violence, in accordance with existing international commitments on gender equality”].

¹²⁴ Id.

¹²⁵ Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará).

¹²⁶ Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention, Declaration on Violence Against Women, Girls and Adolescents and their Sexual and Reproductive Rights, MESECVI/CEVI/DEC.4/14, September 19, 2014, pg. 8.

¹²⁷ Id., pg. 9.

or health of the woman; ii) inability of the fetus to survive; and iii) sexual violence, incest and forced insemination.¹²⁸

Venezuela's Legal Framework

Venezuela's legal framework on abortion violates international standards with regards to the right to life, right to health, and prohibition against discrimination.

Under Article 430, Venezuela places a near-total criminal ban on voluntary termination of pregnancy, levying a penalty of imprisonment from six months to two years on women who obtain abortions. Article 433 provides the only exception, stipulating that no penalties will be incurred if an abortion is carried out by a physician to save the life of the mother; there are no exceptions for the health of the mother, for rape or incest, or for when the pregnancy is not viable. Assisting a woman in voluntarily terminating her pregnancy is also criminalized under Article 431 with a penalty of up to thirty months imprisonment. The Human Rights Committee, in interpreting the right to life in Article 6, stated that "States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable."¹²⁹ Venezuela does not meet this standard. Venezuela's laws further contravene the right to health, as women are restricted from accessing the sexual and reproductive healthcare to which they are entitled: they are forced to risk their health by continuing with risky pregnancies or seeking assistance from feminist networks or sympathetic providers outside the formal healthcare system, who must operate clandestinely given the criminal laws described above.

Further, *de facto* barriers such as limited information about the lengthy, complex process for securing exceptional authorization for abortion where a woman's life is threatened (which requires approval by a doctor and a hospital ethics board) and a lack of doctors willing or even trained to perform the procedure make any legal abortion functionally difficult to obtain, undermining the guarantee of the right to life.¹³⁰

Venezuela's criminalization of abortion is also discriminatory on the basis of gender, as it criminalizes behavior that is only attributed to women and restricts services that are required only by women and girls.

¹²⁸ *Id.*, pg. 16.

¹²⁹ Human Rights Committee, General Comment No. 36, U.N. Doc. CCPR/C/GC/36, September 3, 2019, para. 8.

¹³⁰ New York Times, "The only ones arrested after a child's rape: the women who helped her", April 13, 2021, in which the President of the national obstetric and gynecological association describes the process as "engorroso" or cumbersome, with few women going through it. See, also, Venezuela Analysis, "Venezuelan Women March to Demand Sexual and Reproductive Rights", September 28, 2022, in which a spokesperson for Ruta Verde, a feminist platform, explained that "[d]octors often refuse to perform abortions even when the mother's life is in danger by alleging personal beliefs and [that] most of them are not even trained to conduct these procedures." Available at <https://venezuelanalysis/news/15610>.

In light of the above, UN and regional bodies have long expressed concern over the *de jure* restrictions in Venezuela's legislative framework as well as *de facto* barriers. In 2014, for example, the CEDAW Committee stated that it was "deeply concerned about ... the restrictive abortion law forcing women to resort to unsafe abortion, which often damages the health of the pregnant woman and sometimes results in death."¹³¹ It expressly recommended that Venezuela:

amend its legislation to decriminalize abortion in cases of rape, incest, risk to the health of the mother and severe fetal impairment, [and] remove punitive measures for women who undergo abortion and ensure the availability of abortion services.¹³²

The Human Rights Committee has similarly stated its concern regarding Venezuela's criminalization of the termination of pregnancy except to save a woman's life, "which leads pregnant women to seek clandestine abortions that endanger their lives and health."¹³³

Notably, the communication issued to Venezuela by several UN Special Procedure mandate holders on Ms. Rosales's case in February 2021 included specific observations on Venezuela's legal framework and prosecutorial practices:

The absolute prohibition of abortion has exacerbated discrimination against women and girls, in violation of Venezuela's international obligations to protect the right to life, health, dignity, integrity, privacy and reproductive autonomy. Likewise, prosecution practices have led to the violation of women's rights to freedom, to torture, to cruel, inhuman or degrading treatment, to effective legal assistance, to being shouted at, to challenge illegally obtained evidence, to be considered innocent until proven guilty, to have an impartial and fair trial, to be free from prejudice and gender stereotyping, and to not be discriminated against. We reiterate that criminalization or failure to provide services that are required only by women, such as abortion, constitutes discrimination on the basis of sex.¹³⁴

The communication concludes by deeming Venezuela in violation of Article 2(1) of the ICCPR's prohibition of discrimination.¹³⁵

Also in 2021, the IACHR called on Venezuela to "review domestic legislation on the voluntary termination of pregnancy to ensure that women can effectively exercise their

¹³¹ CEDAW Committee, Concluding Observations, U.N. Doc. CEDAW/C/VEN/CO/7-8, November 14, 2014, para. 30(d).

¹³² *Id.*, para. 31(d).

¹³³ Human Rights Committee, Concluding Observations, U.N. Doc. CCPR/C/VEN/CO/4, August 14, 2015, para. 10.

¹³⁴ OHCHR Communication, pg. 6.

¹³⁵ *Id.*, pg. 12.

sexual and reproductive rights and to refrain from criminalizing human rights defenders who work to promote these rights.”¹³⁶

Discrimination and Vulnerability

The criminalization of abortion particularly impacts women and girls like KS, who are in vulnerable situations (such as being the victim of sexual violence) or who have experienced discrimination on the basis of age, socio-economic status, “living in [a] persistent state of crisis,” or another characteristic.¹³⁷

The Inter-American Commission has highlighted the “intersectionality of discrimination.”¹³⁸ In relation to access to sexual and reproductive rights, the Commission has noted that:

some groups of women—especially women in a state of poverty, those living in rural areas, indigenous or Afro-descendant women, and girls and adolescents—are among those who most often experience violations of their rights to access sexual and reproductive health services in equal conditions and free from all forms of discrimination.¹³⁹

The Commission has also pointed out “the close relationship between poverty, unsafe abortions, and high maternal mortality rates.”¹⁴⁰

Moreover, recognizing the “irreparable impact” of sexual violence on women and girls and the ongoing gaps in Venezuela’s laws and practices, the Commission has “recommended that States design appropriate healthcare protocols for women, girls, and adolescents who are victims of sexual violence and provide safe legal procedures for terminating pregnancies resulting from sexual violence, to prevent unwanted, life-threatening pregnancies from continuing.”¹⁴¹

¹³⁶ Organization of American States, “IACHR expresses concern over lack of access to sexual and reproductive health services in Venezuela”, April 6, 2021. Note: The IACHR used gender-inclusive language elsewhere in the same release. [“The Inter-American Commission on Human Rights (IACHR) once again voiced its concern over the reports regarding the lack of access to sexual and reproductive health services in Venezuela, which is having a disproportionate impact on women and pregnant people of all ages during pregnancy and childbirth”].

¹³⁷ See, e.g., UN Office of the High Commissioner, “Women’s and girls’ reproductive choices must be respected, UN experts say”, September 23, 2022 [“the setbacks experienced during the last years [on the right to sexual and reproductive health] have had negative effects on those in vulnerable situations or those historically subjected to discrimination, in particular, girls ... and women living in a state of crisis”]. Available at <https://www.ohchr.org/en/statements/2022/09/womens-and-girls-reproductive-choices-must-be-respected-un-experts-say-0>.

¹³⁸ IACHR, *Manuela and Family v. El Salvador*, Case 13.069, December 7, 2018, para. 153.

¹³⁹ Inter-American Commission on Human Rights, “IACHR Urges All States to Adopt Comprehensive, Immediate Measures to Respect and Protect Women’s Sexual and Reproductive Rights”, October 23, 2017.

¹⁴⁰ *Id.*

¹⁴¹ Organization of American States, “IACHR expresses concern over lack of access to sexual and reproductive health services in Venezuela”, April 6, 2021.

The Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention (CEVI) has likewise underscored that the “vulnerability of girls increases when they come from poor households, a condition that exposes them to greater risk of gender-based violence and, particularly, sexual abuse and violence,” and that “girls who are victims of violence rarely seek medical attention because of fear or stigma.”¹⁴² The CEVI thus recommended that States “[e]liminate unsafe abortion, ensuring normatively that all pregnancies in girls are considered high risk and allowing legal termination of pregnancy...”¹⁴³

The disproportionate impact of laws criminalizing abortion on the most disadvantaged members of society is reflected in the present case, whereby criminal proceedings were triggered when an impoverished child attempted to terminate a pregnancy that resulted from rape and that was inherently risky because of her age. This left KS – a young girl who was the victim of sexual violence, and extremely poor – separated from her only living parent for nearly a month, while the one other person who helped her – Ms. Rosales – remained detained even longer.

¹⁴² MESECVI, Hemispheric Report on Child Pregnancy in the States Party to the Belém do Pará Convention, 2016, paras. 11-12.

¹⁴³ Id., para. 224.

C. ABUSE OF PROCESS

Various aspects of the proceedings against Ms. Rosales strongly suggest that her prosecution was based on improper motives – namely, that it was initiated as retaliation for her activism on sexual and reproductive health and rights.

The Human Rights Committee has repeatedly held that the ICCPR proscribes improperly motivated prosecutions,¹⁴⁴ establishing – for example – that detention on the basis of human rights work violates the right to liberty protected by Article 9(1).¹⁴⁵ As it has yet to delineate clear criteria for assessing such situations, the jurisprudence of the European Court of Human Rights (ECtHR) is instructive in assessing whether improper motives are driving legal proceedings. Article 18 of the European Convention on Human Rights states that “[t]he restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

The ECtHR has found that circumstantial evidence may be probative when evaluating whether an ulterior motive for prosecution exists. This includes, *inter alia*, the political climate and timing of the proceedings,¹⁴⁶ how the proceedings were conducted,¹⁴⁷ and the seemingly selective targeting of a specific individual.¹⁴⁸

According to the criteria set forth by the European Court, there are significant indicia that the proceedings initiated against Vannesa Rosales met the standards for abuse of process.

First, with respect to the timing and broader political trends, the prosecution of Ms. Rosales was consistent with the documented harassment of human rights defenders in Venezuela.¹⁴⁹ As described above, following Ms. Rosales’s arrest, several UN Special Procedures mandate holders expressed concern that human rights defenders and advocates for sexual and reproductive health and rights such as Ms. Rosales were being harassed, including through “the apparent misuse of criminal law to prosecute human

¹⁴⁴ Human Rights Committee, *Khadzhiyev and Muradova v. Turkmenistan*, U.N. Doc. CCPR/C/122/D/2252/2013, April 6, 2018, para. 7.7. See, also, Human Rights Committee, *Melnikov v. Belarus*, U.N. Doc. CCPR/C/120/D/2147/2012, September 4, 2017, para. 8.8; Human Rights Committee, *Nasheed v. Maldives*, U.N. Doc. CCPR/C/122/D/2851/2016, April 4, 2018, paras. 2.19, 8.7.

¹⁴⁵ Human Rights Committee, *Khadzhiyev and Muradova v. Turkmenistan*, U.N. Doc. CCPR/C/122/D/2252/2013, 2018, para. 7.7.

¹⁴⁶ See European Court of Human Rights, *Selahattin Demirtaş v. Turkey (no. 2)*, App. No. 14305/17, December 22, 2020, para. 429; European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, 2017, November 28, 2017, paras. 320-322; European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, December 11, 2014, para. 107; European Court of Human Rights, *Rasul Jafarov v. Azerbaijan*, App. No. 69981/14, March 17, 2016, paras. 159-161; European Court of Human Rights, *Mammadli v. Azerbaijan*, App. No. 47145/14, April 19, 2018, para. 103.

¹⁴⁷ European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. No. 29580/12, November 15, 2018, para. 171.

¹⁴⁸ *Id.*, paras. 168-170.

¹⁴⁹ See, e.g., Centro para los Defensores y la Justicia, “Situation of Human Rights Defenders in Venezuela”, 2020. Available at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=9213&file=Annexe3>.

rights defenders for their work for human rights.”¹⁵⁰ The UN experts further observed that the cases against Ms. Rosales and others were taking place in “the context of harassment, stigmatization and attacks against human rights defenders in Venezuela.”¹⁵¹ More broadly, the Inter-American Commission on Human Rights has noted that human rights defenders who work on sexual and reproductive rights are “more frequently the target of ... criminalization [through the misuse of criminal law] due to the causes they advance.”¹⁵²

Next, regarding the conduct of the proceedings, the case was characterized by due process violations from the start. These included KS being forcibly questioned by authorities without the presence of a guardian or a lawyer, in violation of the Organic Code for the Protection of Boys, Girls and Adolescents;¹⁵³ the judge upholding the arrest of Ms. Rosales and KS’s mother based on “information acquired through an illegal interrogation of a child;”¹⁵⁴ Ms. Rosales’s residence being searched without a warrant, which is prohibited under the Criminal Procedure Code;¹⁵⁵ the *flagrante delicto* hearing being held four days after the arrest and detention of Ms. Rosales, in violation of the time limit imposed by the Criminal Procedure Code;¹⁵⁶ the delay of the preliminary hearing for over eight months after charges were levied, without explanation – another violation of time limits imposed by the Criminal Procedure Code;¹⁵⁷ the denial of visits of Ms. Rosales’s lawyers when she was in pretrial detention; and the withholding of the casefile from her lawyers for over a month. Further irregularities are discussed below.

Third, the information and reasoning set forth in case file documents and court transcripts suggest that Ms. Rosales was targeted for her work as a human rights defender advocating for sexual and reproductive rights. Among the items seized by the CICPC during the search of her premises were pamphlets offering reproductive health information and services. The pamphlets and Ms. Rosales’s posts on an online platform that disseminated information on sexual and reproductive health were then referred to by the judge in the judicial reasoning on requalifying the charges and imposing pretrial detention, even though Ms. Rosales’s involvement in reproductive rights advocacy should have had no bearing on that decision.

An additional indicator that Ms. Rosales was targeted was the judge’s amendment of the charges beyond all proportion to the acts at issue. First, the judge requalified the charge of assisting a third party to obtain an abortion to the charge of forcing a third party to obtain an abortion, despite a lack of evidence that KS did not consent, and the fact that the pills were requested by a mother on behalf of her child. Second, the judge charged

¹⁵⁰ OHCHR Communication, pg. 6.

¹⁵¹ *Id.*

¹⁵² Inter-American Commission on Human Rights, *Criminalization of Human Rights Defenders*, OEA/Ser.:V/II. Doc 49/15, December 31, 2015, para. 5.

¹⁵³ Organic Code for the Protection of Boys, Girls and Adolescents, Article 541.

¹⁵⁴ Independent International Factfinding Commission, para. 276.

¹⁵⁵ Criminal Procedure Code, Article 196.

¹⁵⁶ *Id.*, Article 356.

¹⁵⁷ *Id.*, Article 327.

Ms. Rosales with conspiracy and criminal association under the Law on Organized Crime and Terrorism Financing – a provision generally applied to organized crime groups. The ratcheting up of charges, including the use of organized crime provisions, against a community social worker who had assisted an impoverished family in terminating the pregnancy of a girl who had been raped suggests that State authorities intended to punish Ms. Rosales for her advocacy work.

Notably, Ms. Rosales’s detention and prosecution occurred even as the authorities released the alleged rapist based on the reasoning that he had not been caught in the act, reflecting inconsistencies in the authorities’ conduct and actively contributing to impunity for sexual violence against women and girls.

Based on the criteria articulated by the EctHR, there are strong grounds to conclude that the proceedings against Ms. Rosales were initiated in retaliation for her reproductive rights advocacy, and thus constituted an abuse of process. While most of the charges were eventually dropped, Ms. Rosales now has a criminal conviction on her record.

Criminalization of Human Rights Defenders

The United Nations Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), which was adopted with strong support by the United Nations General Assembly and represents States’ commitment to implement the principles and rights enshrined in international human rights instruments such as the ICCPR, recognizes the right of everyone to strive for the protection and realization of human rights.¹⁵⁸ This includes seeking and freely publishing information or knowledge on all human rights.¹⁵⁹ Moreover, the Declaration on Human Rights Defenders stresses that the prime responsibility for protecting human rights defenders and ensuring an enabling environment for their work lies with the State.¹⁶⁰

The UN Special Rapporteur on the Situation of Human Rights Defenders has noted that “[s]exual and reproductive rights defenders ... play a significant role in ensuring respect for women’s human rights,” and that their activities as defenders “should not be subject to criminal sanctions.”¹⁶¹ The Rapporteur has further emphasized that “[j]udicial harassment against sexual and reproductive rights defenders should not be tolerated, and [that] judges and prosecutors have a key role in this regard.”¹⁶²

¹⁵⁸ General Assembly, The United Nations Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N. Doc. G.A. Res 53/144, March 8, 1999.

¹⁵⁹ Id., Article 6.

¹⁶⁰ Id., Preamble and Article 2(2).

¹⁶¹ UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights Defenders, U.N. Doc. A/67/292, August 10, 2012, para. 37.

¹⁶² Id.

Regionally, the Inter-American Commission on Human Rights (IACHR) has commented extensively on the criminalization of human rights defenders, recommending that all American States:

...ensure that the authorities or third parties do not use the punitive power of the State and its organs of justice to harass human rights defenders. States must adopt all necessary measures, through judicial investigations, to prevent human rights defenders from being subjected to unjust or unfounded trials.¹⁶³

The IACHR has specifically recommended that justice operators (judges and prosecutors) must “consider ... if the defendant has the quality of human rights defender as well as the context of the alleged facts, which will help determine whether the complaint was used as a mechanism to hinder the work of human rights defender.”¹⁶⁴

With respect to precautionary measures applied to human rights defenders in the framework of a criminal investigation, the IACHR has emphasized that pretrial detention should be applied “only exceptionally and only in instances in which there is a flight risk or obstruction of justice,” and that the detention measure must always have “a precautionary and not punitive measure.”¹⁶⁵

In providing information on access to safe abortion, sexual and reproductive rights, and general reproductive health, Ms. Rosales was acting as a sexual and reproductive rights advocate and thereby as a human rights defender. In this case, though, authorities “use[d] the punitive power of the State and its organs of justice to harass” Ms. Rosales for her work on sexual and reproductive rights.¹⁶⁶ As described above, the informational pamphlets seized at her house were referenced by the judge in the judicial reasoning on the requalification of charges.

The criminal proceedings against Vannesa Rosales have already had a chilling effect on the work of advocates for sexual and reproductive rights and health in Venezuela. In the aftermath of Ms. Rosales’s arrest, many feminist and reproductive justice activists who had previously assisted or accompanied women who sought to terminate their pregnancies ceased their activities and threw away the health information pamphlets and medication considering the credible possibility of charges and imprisonment for their work.

Harassment of Lawyers

The United Nations Basic Principles on the Role of Lawyers state that lawyers must be able to perform their duties “without intimidation, hindrance, harassment or improper interference” and “shall not suffer, or be threatened with, prosecution or administrative,

¹⁶³ Inter-American Commission on Human Rights, *Criminalization of Human Rights Defenders*, OEA/Ser.L/V/II. Doc 49/15, December 31, 2015, para. 284.

¹⁶⁴ *Id.*, para. 287.

¹⁶⁵ *Id.*, para. 34.

¹⁶⁶ *Id.*, para. 284.

economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”¹⁶⁷ The Basic Principles further affirm that lawyers, like other citizens, have the right to “freedom of expression, belief, association and assembly.”¹⁶⁸ A robust and independent legal profession is a cornerstone for the maintenance of the rule of law and respect for human rights in a democratic society, as lawyers play a key role in protecting individuals’ access to justice and redress, and to ensuring due process and fair trial rights.

In Venezuela, human rights lawyers increasingly face obstacles in performing their duties. The International Commission of Jurists has found that lawyers in Venezuela “who work as victims’ representatives in cases of human rights violations are frequently targets of intimidation, harassment, threats and surveillance against them or their families.”¹⁶⁹

Ms. Rosales’s lawyers – Venus Faddoul and Engels Puertas – represented Ms. Rosales in the criminal case against her through their work for the organization 100% Estrogeno, which takes on cases that advance women’s rights. Ms. Faddoul described being subjected to both verbal abuse and threats, including by individuals who appeared to be state agents, because of her work representing Ms. Rosales.¹⁷⁰ At the beginning of proceedings, when Ms. Rosales was in pretrial detention, a government official reportedly pressured Ms. Rosales to fire Ms. Faddoul as counsel, promising her release from detention in exchange for Ms. Faddoul’s removal.¹⁷¹ After Ms. Rosales’s lawyers went public with her case in January 2021, Ms. Faddoul received information that her name was included on a list kept by the Servicio Bolivariano de Inteligencia Nacional (SEBIN).¹⁷² Ms. Faddoul also stated that Mr. Puertas received verbal threats and pressure from intelligence agencies and from the police. This was not the first time that Mr. Puertas and Ms. Faddoul had faced harassment because of their work; in a separate case, Mr. Puertas was threatened with arrest after he made a petition for a judge’s recusal.¹⁷³ The risk to their personal safety eventually increased so much that they left Venezuela and went into exile in June 2022.¹⁷⁴

Based on the punitive actions taken against Ms. Faddoul and Mr. Puertas, other lawyers may be deterred from engaging in cases of public interest, undermining Venezuelan citizens’ rights to legal assistance and to seek redress and remedies for abuses.

¹⁶⁷ UN Basic Principles on the Role of Lawyers, September 17, 1990, Principle 16.

¹⁶⁸ *Id.*, Principle 23. See also ICCPR, Articles 18, 19, 21, 22.

¹⁶⁹ International Commission of Jurists, “Lawyers under attack: Barriers to the legal profession in Venezuela”, May 2022, pg. 14. Available at <https://www.icj.org/wp-content/uploads/2022/06/Venezuela-Lawyers-under-attack-publications-briefing-paper-2022-ENG.pdf>.

¹⁷⁰ Conversation with Defense Lawyer, October 18, 2022.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ See Front Line Defenders, “Intimidation and Threat of Arrest Against Human Rights Lawyers Engels Puertas and Juan Carlos Barroeta Rivas.” Available at <https://www.frontlinedefenders.org/en/case/intimidation-and-threat-arrest-against-human-rights-lawyers-engels-puertas-and-juan-carlos>.

¹⁷⁴ Conversation with Defense Lawyer, October 18, 2022.

CONCLUSION



The prosecution of Vannesa Rosales and subsequent harassment of her lawyers reflects the weaponization of the judicial process in Venezuela against human rights defenders who advocate for sexual and reproductive rights. The judge's decision to ratchet up the charges against Ms. Rosales, manifestly out of proportion to the acts underlying the alleged offenses, coupled with multiple procedural irregularities and the unjustified imposition of pretrial detention, all indicate that she was targeted for her work on sexual and reproductive rights. The proceedings send a signal to those working on such issues that the State might retaliate against them with criminal proceedings and detention. Additionally, as evidenced by the repercussions faced by Ms. Rosales's lawyers, those who undertake legal representation of human rights advocates are also subject to state harassment.

Stepping back, Venezuela's criminalization of abortion violates the right to life, the right to health, and the right to equality and non-discrimination. The harmful consequences of this legislation were evident in its application to the case of KS, a child rape victim who was forced to seek termination of her pregnancy outside of the healthcare system, and who then saw those who sought to help her arrested, detained, and prosecuted by State authorities.

Recommendations of Paula Avila-Guillen, TrialWatch Expert:

- The State of Venezuela should revise its national laws to comply with international standards on reproductive rights – in particular, Articles 430-434 of the Penal Code. In order to adhere to such standards, Venezuela must not only amend its laws but also must ensure that its policies make abortion truly accessible, at a minimum, in cases where the pregnancy is a result of rape, where a child is pregnant, and where the pregnancy poses a threat to the health or life of the pregnant person. Mere changes in the law, without a clear plan for accessibility, will disproportionately impact those in the most vulnerable situations, as seen in the case of KS.
- Under international human rights law, the work of human rights defenders, including sexual and reproductive rights advocates, must be protected. Venezuela violated these standards by seemingly retaliating against Ms. Rosales for her work as a sexual and reproductive rights advocate. To avoid a chilling effect on other defenders, the State should take all measures necessary to create an environment in which human rights defenders can safely advocate for human rights without fear of criminalization and intimidation.
- States have a duty to protect attorneys from harassment and intimidation. This is fundamental to accused person's ability to exercise their rights to due process and a fair trial. Venezuela should ensure that lawyers can perform their duties free of intimidation and threats and hold those who threaten lawyers accountable.

- The State should improve training on human rights standards in the justice sector, including by integrating a child and gender-sensitive perspective. This case was an egregious example of the judicial system's failure to protect children like KS who seek necessary reproductive healthcare. Instead, State authorities weaponized the criminal justice system against Ms. Rosales and KS's mother.



GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, or discrimination, such as on the basis of “race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status,”¹⁷⁵ and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

¹⁷⁵ ICCPR, Article 26.